

NATURAL RESOURCES COMMISSION

Meeting Minutes

October 17, 2007

Pursuant to the notice filed with the Town Clerk, the meeting of the Natural Resources Commission was held at 141 Keyes Road, Concord, MA at 7:00 p.m. on Wednesday, October 17, 2007. The following Commissioners were present: Montgomery Lovejoy, Acting Chair, Jamie Bemis, Steve Verrill, and George Lewis. Delia Kaye, Natural Resources Administrator; and Cynthia L. Gray, Natural Resources Administrative Assistant were also present.

CONTINUANCES:

EARLEY – 177 Monsen Road / **NOI** – Demolishing an existing structure and constructing a new single-family dwelling including a new septic system within 100 feet of Bordering Vegetated Wetlands, **DEP File #137-942**

Markus Pinney of Land Use Environmental Consultant was present on behalf of the Applicant. The fence has been relocated and the encroachment on Town land noted on the plan. Any requests to reinstall the fence within wetland resource areas will be brought before the Commission. Revised plans show that the shed will be relocated on to the Applicant's property. The Applicant has received Board of Health approval regarding the septic system. The porch and patio have been revised. Markus Pinney noted the ditch as a man-made structure and not as a perennial feature.

Montgomery Lovejoy noted that the Commission expects to close the hearing and issue an Order of Conditions later in the meeting.

KITTREDGE – 77 Westford Road / **RDA #07-16** – Agricultural work around greenhouse area consisting of clearing trees near a drainage ditch; brush cutting; expanding the current irrigation pond; squaring off field edges; and installing a culvert in a new location within the 100-foot Buffer Zone to Bordering Vegetated Wetland within Spencer Brook Farm. Applicant, Dan Kittredge appeared together with wetland scientist Steven Eriksen, Norse Environmental Services, Inc.

Steve Eriksen stated the Applicant's RDA filing was appropriate for this matter. Steve Eriksen noted that it would be costly for the Applicant to abide by staff's recommendations for a NOI filing as it was anticipated to cost approximately \$3,000.00 for a survey and \$2,000 for a NOI filing.

Jamie Bemis asked about the trees shading the greenhouses. Jamie Bemis noted that the land had not been maintained in agriculture and that the greenhouses themselves could be relocated, and that the relocation approved by the Commission in June 17, 2005 was done with the understanding that the location would not be ideal. Jamie Bemis also noted that the hoop houses were not permanent structures and could be moved. Jamie Bemis noted that the enlarging of the pond encroached into land with a Conservation Restriction on it, held by the Town. Delia Kaye stated that the improvement or maintenance of the pond resulted in sedimentation of a stream, a violation, which automatically required a NOI application in accordance with NRC policy and therefore, is not an agricultural exemption. Delia Kaye also indicated that the wetlands needed to be delineated so that squaring off of field edges was clear. She also stated that an engineering plan was required to ensure that the unapproved culvert outlet matched the existing stream elevation and drainage would function.

Steve Erickson stated the channels could be cleaned out at any time as a regular maintenance practice. Delia Kaye noted that because it was a violation, this exemption did not apply. Steve Verrill noted that the trees within the Buffer Zone could be pruned in order to reduce the shading on the greenhouse area. Jamie Bemis asked the Applicant if he would rather cut down the trees than move the non-permanent greenhouse structures. Dan Kittredge stated that his preference was to cut trees rather than move the greenhouses. Steve Eriksen stated that the Applicant would likely appeal because they had no interest in being overregulated by the Commission to conduct agricultural activities on their land. Delia Kaye noted that responsible agriculture was a prime interest of the Commission, as long as wetland resource areas were protected, and that agricultural interests were well-represented on the Commission. Delia Kaye referenced the fact that staff had spent quite a bit of time to help the Applicant with this project, with many misunderstandings about approved work, jurisdictional areas, and appropriate filings. Delia Kaye noted that if the Applicant flagged the wetlands adjacent to the drainage ditch, any clearing outside of that approved limit would be exempt. Steve Verrill stated that pruning or tree removal within this area should be considered. Montgomery Lovejoy felt that the issues had been adequately debated and indicated that the Commission would proceed with the issuance of a Positive Determination for some activities, and a Negative Determination for others.

Jamie Bemis moved to issue a Positive Determination #1, 2b, 3 and a Negative Determination #5. George Lewis seconded. Three in favor. Steve Verrill opposed.

CONCORD WOLD, LLC – Vacant Land behind #110 Commerford Road / **RDA #07-17** – Temporary access for a rubber track excavator through Bordering Vegetated Wetlands (BVW), Bank, Land Under Water, the 200-foot Riverfront Area of Baptist Brook, and the 100-foot Buffer Zone to BVW and Bank, in order to perform soil testing located within the 100-foot Buffer Zone to BVW and Bank of an intermittent stream and 200-foot Riverfront Area of Baptist Brook

Rich Harrington of Stamski & McNary, Inc. appeared together with Applicant, Jim White.

Rich Harrington stated access for proposed soil borings would be from Commerford Road. Existing cart paths would be used for some for the borings. Rich Harrington noted that different Towns require different procedures. Rich Harrington indicated that he had consulted with David

Crossman of B & C Associates as well as speaking with Central Regional DEP office for guidance. Photos 1-4 of the ANRAD show the intermittent stream crossing and photos 5-8 show Baptist Brook. Rich Harrington noted that David Crossman had reviewed the project and had supplied a letter of support indicating no wetlands would be altered from the proposed work. This letter was provided to the Commission members at this hearing. The upland area would be accessed by backhoe or excavator, either machine would need to cross the stream using the existing cart paths.

Montgomery Lovejoy noted that staff issued a letter in July to the Applicant indicating that any proposed work in resource area(s) was not exempt, and would require a NOI in accordance with the WPA Regulations. This was in response to an email from the Applicant that he believed he was exempt from the WPA Regulations for proposed work in wetlands. Rich Harrington stated that this did not constitute work as the machine would be driving across established paths not disturbing trees. Montgomery Lovejoy noted that he had participated in the site walk along Baptist Brook and the area was a resource area. Montgomery Lovejoy noted that the Commission needed to remain consistent in the NOI filing request and noted that Baptist Brook would not stay dry for long. Jim White noted that the letter from staff was premature and asked if the work proposed would alter wetlands. Jim White went on to state his opinion that alteration means to change the condition of the area. Alteration was discussed. Because of the controversial nature of this project, and the land contains sensitive high-value resource areas, a NOI would be a cleaner way of handling the proposed work.

Delia Kaye asked how many test pits were proposed. Rich Harrington stated that a machine would be in the area for a few days. Montgomery Lovejoy asked about the type of machinery being used. Rich Harrington stated that the machinery consisted of a land excavator with a 7-foot width span. Planks would be put down and hay bales would be used in streambeds if flowing. Rich Harrington stated that the Applicant had supplied credible evidence that no NOI filing was required.

Delia Kaye asked if any trees would be removed in resource areas. Rich Harrington stated no trees would be removed. George Lewis noted that driving the excavator across the resource area did in fact alter the characteristics of the resource area. Jamie Bemis noted that the site visit had taken place at the beginning of the drought. Steve Verrill noted that moving over stone seemed acceptable.

Peter Alden, 11 Riverside Avenue, asked what purpose this filing would serve. Rich Harrington answered that the Applicant would be performing soil testing for residential septic systems and the request was for temporary access.

Montgomery Lovejoy noted that staff had recommended issuing a Positive Determination #3. Steve Verrill requested further discussion. George Lewis agreed.

Steve Verrill asked about Natural Resources Commission jurisdiction. Delia Kaye stated that wetland activities such as those proposed were not exempt because they represented alteration to wetland resource areas. She also indicated that an Order of Conditions offered more ability to enforce compliance. Jamie Bemis referenced the risk of setting new precedent. Montgomery

Lovejoy indicated that requiring a NOI would reflect consistency. Montgomery Lovejoy also expressed concern about the machine moving around and damaging trees in the resource areas. Steve Verrill asked about the overall difference between a NOI and a RDA filing. Montgomery Lovejoy indicated that a NOI application was a more comprehensive process which includes abutter notification.

Jamie Bemis moved to issue a Positive Determination #3. George Lewis seconded. Three in favor. Steve Verrill opposed.

CONNOR – 349 Walden Street / AMENDED ORDER OF CONDITIONS, DEP FILE #137-859 – An amendment to the Order of Conditions involves increasing the size of a detached garage, and sewer service relocation located within Bordering Land Subject to Flooding and the 100-foot Buffer Zone to Bordering Vegetated Wetland.

Rich Harrington of Stamski & McNary, Inc. and Henry Dane, Esq. of Dane, Brady & Haydon appeared together with Attorney Dane's son, Michael Dane, recent property owner.

Attorney Henry Dane indicated that this house is a small dwelling approved for garage construction which never went before the Zoning Board of Appeals. Michael Dane requests to build a new structure with an attached breezeway to the garage. Floodplain calculations have been provided by Stamski & McNary. Attorney Dane indicated that the structure would be put on slabs on a perforated foundation to allow water flow under the proposed garage. In addition to the requested Amendment to the existing Order of Conditions, Attorney Dane requested an NRC recommendation be submitted to the Planning Board and the Zoning Board of Appeals. Attorney Dane also requested an additional one-year extension on the permit as two years have currently run with no construction on the premises. This would allow enough time for the new structure to be built. Delia Kaye requested that Attorney Dane put his Extension request in writing for submission to the Commission.

Montgomery Lovejoy noted that the Commission would continue this hearing until the next meeting, at which time the Commission would expect to close the hearing and issue a permit. Attorney Henry Dane indicated that his son was going before the Planning Board on Tuesday. Delia Kaye indicated that she would submit correspondence to the Planning Board about the pending approval. Attorney Henry Dane requested a copy of the draft Order prior to the next scheduled meeting.

CLOSE HEARINGS/ISSUE PERMITS

CONNOR (Duplicate Order of Conditions) – 349 Walden Street, DEP File #137-859 - Steve Verrill moved to issue a Duplicate Order of Conditions. George Lewis seconded. All so voted.

ESTABROOK ROAD NOMINEE TRUST – 55 Estabrook Road / AMENDED ORDER, DEP File 137-925 - Attorney Gregor McGregor appeared together with Tim Santos of Holmes & Mcgrath. The width of the proposed driveway is shown as 10 feet as requested by the Commission.

George Lewis moved to close the hearing. Jamie Bemis seconded. All so voted. Steve Verrill moved to issue an Amended Order of Conditions as proposed. Jamie Bemis seconded. All so voted.

Attorney McGregor requested that the permit be picked up on Friday.

DEE BUS SERVICE – 1135 Main Street, DEP File #137-950

Sean Hale of David E. Ross Associates appeared together with Attorney Craig Gugger of Alphen Balas & Santos. Sean Hale indicated that two changes had been made to the plan. The small depression affected by the cleanup is shown and the area to be mowed twice per year is also shown. Attorney Craig Gugger indicated that his law firm had sent correspondence to various sub-contractors and Clean Harbors and that final payment had been made.

Jamie Bemis asked about the oil/gas in the soil. Delia Kaye noted Clean Harbors had not yet submitted their final report.

Jamie Bemis moved to close the hearing. George Lewis seconded. All so voted.

Richard Lloyd, 20 Crest Street is an abutter to an abutter. He noted that the Commission had just closed the hearing and that no further comments would be accepted but expressed concern about the return of the school busses on the premises and asked about the pilings on the property and if they would be removed. Attorney Craig Gugger indicated that the Applicant is before the ZBA and that the bus garage is not proposed to go back on the site. Delia Kaye noted an Interim Report that had been submitted by Clean Harbors this summer.

Jamie Bemis moved to approve Findings A & B. George Lewis seconded. All so voted. Jamie Bemis moved to issue a standard Order of Conditions with Special Condition 18-56. George Lewis seconded. All so voted.

BENNETT – 75 Bow Street, DEP File #137-889 - George Lewis moved to approve Findings A-D. Jamie Bemis seconded. All so voted. George Lewis moved to issue a standard Order of Conditions with Special Conditions 18-43. Steve Verrill seconded. All so voted.

EARLEY – 177 Monsen Road, DEP File #137-942 - George Lewis moved to close the hearing. Steve Verrill seconded. All so voted. Steve Verrill moved to issue a standard Order of Conditions with Special Conditions 18-45. Jamie Bemis seconded. All so voted.

REQUEST FOR EXTENSION PERMITS:

NORMANDY CONCORD ACQUISITION LLC – 300 Baker Avenue, DEP File #137-625
Cheray Shein, Esq. of Lerner & Holmes, P.C. appeared together with George Preble, Principal of Beals & Thomas.

Attorney Cheray Shein indicated that the wetland delineation had been redone and the storm water issues reviewed by Beals & Thomas. George Preble of Beals & Thomas indicated that he had reviewed documentation prepared by Rizzo Associates, Inc. George Preble is currently working with Bill Renault, Concord Public Works Engineer. The shape of the basin has been revised in accordance with requests from the ZBA and CPW. The July 2007 calculations were located. The spill water elevation from the basin was noted at 118.4 feet. A simple calculation takes away the spill water elevation. The contour of the basin is at 119. Delia Kaye noted concern with issuing an Extension based on a letter rather than revised plans. George Preble noted that the simple solution would be to change the perimeter of the berm. Delia Kaye noted that the plan and drainage calculations needed to match. Montgomery Lovejoy indicated that this would be filed with the plan negating the need to reference the letter. George Preble agreed to submit the plans to NRC.

This hearing was continued to November 7, 2007 at which time the NRC expects to close the hearing and issue an Extension for three years.

GOWER (SELIAN) – 63 Cedar Way, DEP File #137-812 - No one appeared to present this request. This request for extension was tabled until November 7, 2007 in order for DNR staff to dialogue with the Applicant's representative.

CERTIFICATES OF COMPLIANCE:

CONCORD COUNTRY CLUB – 240 ORNAC, DEP File #137-778 - George Lewis moved to issue a standard Certificate of Compliance. Jamie Bemis seconded. All so voted.

OTHER BUSINESS:

Approve October 3, 2007 Meeting Minutes – tabled until November 7, 2007

Warrant Articles 9 and 10 by Petition – Bruce Freeman Rail Trail

Delia Kaye provided the Commission with information on environmental work done to date, and additional studies that the Town had either completed or intended to complete. Some of these studies were a result of public input during the community outreach process. She noted that the report that the consultant is preparing has not yet been submitted. Julie Melbin, 210 Stone Root Lane, spoke of the intent of Article 9 and urged support of the article. Jane Coutre, 114 Stone Root Lane, referenced supplemental documentation presented to the Commission. Barbara Pike, 118 Border Road, referenced the trail as noted on a DVD prepared by Concord Rural Trails. Barbara Pike indicated that the Town is currently studying the impacts and language of abandoned rail trails. Barbara Pike urged the Commission not to support Articles 9 and 10. Mike Beer, 1 South Meadow Ridge Road, noted there should be scrutiny with all trails and urged the Commission to support Articles 9 & 10. Judy Larocca, 60 Oak Road, noted that the railroads engineered a strong structural system and that the rail beds are currently in excellent condition. Dan Latham, 22 Southfield Circle, inquired as to how many hours of field work would be required of VHB. Lydia Rogers, 210 Old Pickard Road, indicated that before we change the trail, we need to understand what's currently there. Lydia stated a study is needed which should

be available for Town's people to review so a vote could then be cast. Jill Appell, 244 Caterina Heights, noted the confusion on voting and that an environmental analysis needed to be completed first. Janet Rothrock, 618 Annursnac Hill Road, asked if there was any more scrutiny after the initial 25% and questioned whether or not folks really understood the process. Delia Kaye indicated that any work proposed on the rail trail would require a Notice of Intent that would be reviewed by the Commission. Jane Coutre, 114 Stone Root Lane, noted the decision on the trail should be that of the people and not of MassHighway. Julie Melbin, 210 Stone Root Lane, noted the quality of an EIR was important. Ellen Quackenbush, 206 Prairie Street, noted a no confidence vote if these articles were supported. Judy Larocca, 60 Oak Road, noted that this matter had no place on the Town Meeting agenda as Town Meeting votes on funding, not on design. Jill Appell, 244 Caterina Heights, noted the impact report would not be completed by March in time for the April Town Meeting. Julie Melbin, 210 Stone Root Lane, noted that the Town of Sudbury had solicited a four-season wildlife study. Montgomery Lovejoy noted that the joint public hearing on Monday, October 22, 2007, was an informational session and recommended that the Commission reconvene after Monday night's meeting.

A Place To Grow – Settlement. Delia Kaye updated the Commission with the information that the Applicant and the abutter who appealed the project has reached an agreement that installing a fence between the two properties satisfactorily addressed the abutters concerns.

Concord Public Works Projects. Delia Kaye outlined several projects that CPW is interested in performing next year, and that would require filing with the Commission.

Upcoming Meetings:

Wetland Bylaw Meeting – November 9, 2007

Wetland Bylaw Presentation to Staff – November 16, 2007

Next NRC Meeting- currently scheduled for November 7, 2007 which may need to be continued to November 14, 2007 due to adjourned sessions of Special Town Meeting being held on November 5, 2007

The meeting adjourned at 10:45 p.m.

Respectfully submitted,

Delia R. J. Kaye, Natural Resources Administrator

Cynthia L. Gray, Natural Resources Administrative Assistant